aggregate of sums decreed against the appellant exceeds $300 ($500) an appeal lies, although the amount decreed to no one of appellees amounts to $300 ($500). *Hicks* v. *Roanoke,* 94 Va. 741.

It is clear from this latter case that the court in the case at bar followed the rules laid down in the many cases on this subject. C. B. G.

RATLIFF V. RATLIFF ET AL.*

Supreme Court of Appeals.

June 16, 1904.

CHANCERY PRACTICE—BILL OF INTERPLEADER—WITNESS—COMPETENCY—DESCENT OF REALTY—FRAUDULENT CONVEYANCE—CURTESY.

1. One who has been induced by a party to convey land to him which, on the face of the contract, belonged to others, and is threatened with suit in consequence of this act, may, in a suit to enforce his vendor's lein, convene all parties in interest, and have their respective rights determined and the deed reformed.
2. A witness otherwise incompetent is made competent for all purposes if called by the other party to the litigation.
3. An equitable interest in real estate descends just as a legal estate.
4. One who has conveyed land to another to defraud his creditors is estopped from denying the validity of the conveyance.
5. A husband is not entitled to curtesy in the statutory separate estate of his wife, which he has created for her benefit without reservation of his marital rights.

Keith, P., and Cardwell, J., dissenting.

Appeal from Circuit Court, Washington county.

Action by John B. Hamilton against M. S. Ratliff and others. From the decree, M. S. Ratliff appeals. *Reversed.*

Daniel Trigg and *L. P. Summers,* for appellant.

White & Penn and *M. H. Honaker,* for appellees.

HARRISON, J.

In the fall of 1886 John B. Hamilton executed to Lucinda Ratliff and John R. Ratliff, one of her sons, a title bond for a tract of land near Abingdon, Va., in consideration of $6,500, of which $3,000 was paid in cash, the residue being evidenced by the joint bonds of the vendees. On the 11th of January, 1887, for reasons

* Reported by West Publishing Company.

satisfactory to the parties, this title bond and deferred purchase-money bonds were surrendered to Hamilton, an additional $1,000 paid on the purchase, and a new title bond executed by Hamilton to Lucinda Ratliff and Floyd A. Ratliff, another son, which acknowledges the receipt of $4,000 in cash; it being provided that the residue of the purchase money should be paid in four equal annual installments, evidenced by the notes of Lucinda and Floyd A. Ratliff, and providing that the vendor should execute a good and sufficient deed as soon as the land was run off and the notes delivered. The grantee, Lucinda Ratliff, died in the fall of 1887, leaving her husband, M. S. Ratliff, and 11 children surviving her. On the 9th of February, 1891, Floyd A. Ratliff assigned to his father, M. S. Ratliff, all interest that he might have under and by virtue of the contract or title bond; the consideration for this assignment being that the assignee should pay the balance of purchase money then due on the land, amounting to $1,816. This assignment expressly provides that it shall not apply to the interests of the assignor in the land as one of the heirs of his mother, Lucinda Ratliff.

On September 4, 1896, John B. Hamilton, the vendor in the title bond, without the knowledge or authority of the heirs of Lucinda Ratliff, conveyed the land in question to M. S. Ratliff, the husband and father of the vendees named in the title bond, reserving a vendor's lien for a small balance of purchase money, amounting to $362.46. After this deed was recorded, Hamilton, being informed that the heirs of Lucinda Ratliff would contest his right to make the deed to their father, M. S. Ratliff, filed his original bill, seeking to enforce the payment of the balance of the purchase money due to him, and convening all the parties, in order that the deed might be reformed in accordance with their respective rights. Subsequently an amended bill was filed, bringing in additional parties and repeating the allegations of the original bill. To these bills M. S. Ratliff filed his demurrer and answer; denying in general terms that the land was sold to Lucinda Ratliff, and insisting that all the negotiations leading up to the purchase were alone with him, and that the entire purchase money was paid by him from his own resources. Subsequently J. M., J. R., and F. A. Ratliff, three of the adult heirs of Lucinda Ratliff, filed their answers, asking that they be treated as cross-bills, in which they assert that the land in question was bought and paid for by their

mother, Lucinda Ratliff, and that the deed from Hamilton to M. S. Ratliff was without authority, and praying that it be set aside and the heirs of Lucinda Ratliff restored to their rights under the title bond. M. S. Ratliff filed his demurrer and answer to these cross-bills, reiterating the position taken in his answer to the original and amended bills—that the land was bought and paid for with his own means and belonged to him.

The Circuit Court held that M. S. Ratliff could not defeat the rights of the heirs of Lucinda Ratliff under the title bond of January 11, 1887, and that the deed from Hamilton to M. S. Ratliff was without authority and must be set aside. The court further held that M. S. Ratliff was entitled to the interest bought by him from F. A. Ratliff under the assignment mentioned of February 9, 1891, the nature and extent of which were fully known to him; that under this assignment he was entitled to an undivided interest in the land, in the proportion that $1,816, the balance of purchase money which he then agreed to pay, bore to $6,500, the whole purchase money agreed to be paid for said land. From this decree M. S. Ratliff has appealed.

The first assignment of error is to the action of the court in overruling the demurrer of appellant to the original and amended bills.

John B. Hamilton had, upon the inducement of the appellant, made him a deed to land which, on the face of the contract, belonged to other parties. He was threatened with suit in consequence of this act, and we are of opinion that, in a suit to enforce payment of his vendor's lien, he had a right to convene all parties in interest, and to ask a court of equity to determine their respective rights in the land, and, if necessary, to set aside the deed he had made, and direct to whom the land should be conveyed. The bill, in addition to seeking a satisfaction of the balance of the purchase money, was in the nature of a bill of interpleader, convening adverse claimants in order that the complainant, who occupied the position of a disinterested stakeholder, might be saved harmless. We are, therefore, of opinion that the demurrers to the original and amended bills, and also to the cross-bills, were properly overruled.

A further assignment of error is to the action of the court in not excluding the testimony of John R. and F. A. Ratliff.

John R. Ratliff was not a party to the contract or title bond

which is the subject of dispute. This contract was with Lucinda Ratliff and F. A. Ratliff. Besides, M. S. Ratliff, an adverse party, having been examined for himself, John R. was thereby made competent, if otherwise incompetent. As to F. A. Ratliff, if he were incompetent, having been called as a witness by M. S. Ratliff, he was made competent for all purposes.

The fifth and sixth assignments of error seem to assert the proposition that even though Lucinda Ratliff may have been entitled to the land in question, or a part thereof, still, as she died without having the legal title thereto, her interest was not descendible to her heirs. This position is without merit. An equitable interest in real estate descends just as a legal estate.

The remaining assignments of error call in question the respective rights of the parties in and to the land in controversy.

It appears from the record that, prior to the purchase of the land in question, the appellant and his family lived in Tazewell county, and that he and his wife, between them, owned in Tazewell and Buchanan counties considerable real estate, the title to the greater part of which was in his wife. Although the title to these lands was in Lucinda Ratliff, the appellant insists that, as a matter of fact, they belonged to him. His explanation of the title to these lands being in his wife, and of the title bond for the Hamilton land being in her name, is stated in his deposition as follows: "Me and Gordon Rife had been in the mercantile business and failed, and we compromised with our creditors, and give a deed of trust on our property—each one on our separate properties. Each one was to pay his half of the indebtedness, and, upon doing so, was to be released from the other. It was recorded in Buchanan county. The courthouse was burned, and those papers was burned; and I paid my part of the indebtedness, and Mr. Rife never paid any of his, and for that reason I was afraid that I would have to pay unjust money, and that was the reason why I had that bond drawn the way I did." In answer to a subsequent question with respect to the Buchanan lands, he says: "I had them conveyed to my wife because I was afraid I would have some of Gordon Rife's debts to pay." Lucinda Ratliff derived part of the lands in Tazewell county from her father's estate. It is very clear from the pleadings and evidence in the cause on behalf of the appellant that such of said lands as she held the title to at his instance and request were conveyed to the wife for a fraudulent purpose. The

appellant cannot now rely upon his own wrong to defeat the title of the wife to the Tazewell and Buchanan lands, which had been conveyed to her. He would, in effect, be asking the court to interfere, and by its decree to relieve him from the consequences of his own fraud. This a court of equity will never do. The authorities speak with one voice on this subject. *Harris* v. *Harris' Ex'r*, 23 Gratt. 737; *Garner* v. *Second Nat. Bank, etc.*, 151 U. S. 420, 14 Sup. Ct. 390, 38 L. Ed. 218.

Section 2458 of the Code (1887) provides that "every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons, of or from what they are or may be entitled to, shall as to such creditors, purchasers, or other persons, their representatives or assigns, be void." This section, as well as the unvarying decisions of this court, however, declares that, as between the parties, such a writing shall be binding and valid. *Harris* v. *Harris, supra.*

So that the lands in Tazewell and Buchanan counties which had been conveyed to Lucinda Ratliff at the instance and request of the appellant belonged to her, and her heirs are entitled to an interest in the Hamilton land to the extent that it was paid for with the proceeds of the sale of their mother's land in Tazewell and Buchanan counties, whether derived from her father, or conveyed to her at the instance and request of the appellant.

Lucinda Ratliff and F. A. Ratliff were co-tenants under the title bond of January 11, 1887, executed by Hamilton for the land in question; each being, as between themselves, bound for one-half of the purchase money. Under the assignment by F. A. Ratliff of February, 1891, the appellant took his assignor's shoes, and became a tenant in common with the heirs of Lucinda Ratliff, and is entitled to an interest in the land to the extent that he has paid the purchase money. *Grove* v. *Grove,* 100 Va. 556, 42 S. E. 312. It was, therefore, error in the court to limit the interest of the appellant to the extent of the unpaid purchase money due at the date of the assignment.

It is impossible to determine from the record what proportion of the purchase money for the land in controversy was paid with the proceeds of the sale of the real estate, the title to which was in Lucinda Ratliff. It is evident that the first payment of $3,000 came from that source, for it was evidenced by the check of the purchasers of her land, which was payable to Lucinda Ratliff, and

by her indorsed to John B. Hamilton, her vendor. It is also quite clear that $632.16 of the second payment of $1,000 came from that source, for it was a check of the same purchasers of her land, and went to the credit of John B. Hamilton in bank on the same day that the cash payment of $1,000 was made. Further than this, however, we are unable to go without danger of doing injustice. The case must be referred to a commissioner, to ascertain what part of the land in controversy was paid for from the proceeds of the sale of the real estate of Lucinda Ratliff, and what proportion was paid for by the appellant, taking any additional evidence that may be necessary to facilitate the inquiry, and upon the coming in of that report the court can determine and fix the interest in the land of each of the parties to this controversy.

There are two assignments of cross-error under rule 9. The first of these is disposed of by the views already expressed. The second is that the court erred in holding that the appellant was entitled to curtesy in that portion of the land which belonged to the heirs of Lucinda Ratliff.

The lands in Tazewell and Buchanan counties, the title to which was in Lucinda Ratliff, constituted a separate statutory estate, except the land derived from her father; and, when the proceeds of those lands was reinvested under the title bond executed by Hamilton to Mrs. Ratliff, the lands thus acquired continued to be her separate statutory estate. This court has held that a husband is not entitled to curtesy in the equitable separate estate of his wife which he has created for her benefit; that he is excluded by the nature of the transaction. *Jones* v. *Jones' Ex'r,* 96 Va. 749, 32 S. E. 463. We are of opinion that the reasons given in the case cited for excluding the husband from curtesy in the equitable separate estate which he has created with equal force deny his right to curtesy in lands that he has conveyed or caused to be conveyed to her without reservation of his marital rights, where such lands constitute, as in the case at bar, statutory separate estate. See note to *Jones* v. *Jones' Ex'r, supra,* found in 4 Va. Law Reg. 821, 822, by the author of Burks' Separate Estates. We are, therefore, of opinion that the appellant was not entitled to curtesy in such of the Tazewell and Buchanan lands as were conveyed to Lucinda Ratliff by her husband, or by others at his instance and request, and hence is not entitled to curtesy in that part of the Hamilton lands paid for with the proceeds of such lands.

For these reasons the decree complained of must be reversed, and the cause remanded for further proceedings in accordance with the views expressed in this opinion.

CARDWELL, J. (dissenting).

The doctrine that a litigant will not be heard to assert his own wrong to defeat a right claimed by another, or to defend a right he claims against the right claimed by another, has, in my judgment, no application to this case. If, in point of fact, M. S. Ratliff intended to perpetrate a fraud upon his creditors in putting the title to the lands in question here, or those in Tazewell and Buchanan counties, in his wife, Lucinda Ratliff, which were sold in her lifetime, and the proceeds of which sales went into the purchase of the lands here in question, and his wife knew of his wrongful intent and participated in it, then she is, with respect to the transactions, equally guilty, and the maxim, "*In pari delicto potior est conditio defendentis*," applies to her. If, on the other hand, she was ignorant of his wrongful purpose, but did not in fact furnish any portion of the purchase money, she and those claiming under her are mere volunteers. As such, they are in the attitude of plaintiffs seeking specific performance of a contract—a relief which is never granted except to a plaintiff who stands upon a contract supported by a valuable consideration. In this case the legal title is in the husband, and rightly in him, to the extent that the consideration emanated from him. He asks nothing except to be let alone. Neither courts of law nor equity have jurisdiction to punish the actors in a fraudulent transaction by force of the maxim invoked in the opinion of the court. All that the courts can do is to withhold all aid in the enforcement of such contracts. Here the husband asks nothing at the hands of the court, but stands upon his legal right as the holder of the legal title, and that position should prevail until it is assailed by some one with a better equity. A volunteer has not only no better equity, but he has no equity whatever. I think the inquiry directed by the court is too narrow. The transactions should be probed to the bottom, and all the facts brought to light. Let it be made to appear who paid for the Tazewell and Buchanan lands, and then, with full knowledge of the entire case from its inception, the court will be in a position to balance the equities between the parties, and with confidence determine their respective rights.

From so much of the opinion of the court, therefore, as narrows the inquiry to be made upon the case going back to the Circuit Court so as to exclude inquiry as to who in fact paid the purchase money for the Tazewell and Buchanan lands, I dissent.

KEITH, P., concurs.

NOTE.—Though the rules of law laid down in this case by a majority of the court are sound, the conclusion deduced therefrom does not commend itself to us.

In the fall of 1886 Lucinda Ratliff was the owner of certain real estate in Tazewell county, Va. A part of this estate she inherited from her father, and the remaining portion was conveyed to her by her brothers and sisters. These conveyances were made in the years 1881, 1882, 1883 and 1886.

M. S. Ratliff, the husband of Lucinda Ratliff, claimed that he paid for the interests conveyed to his wife, as above stated, and had the conveyance made to her to avoid the payment of certain indebtedness of Ratliff & Rife, an insolvent firm of which he had been a member.

On the 6th of October, 1886, Lucinda Ratliff and M. S. Ratliff, her husband, sold and conveyed the above land to Wm. C. Bullitt. At the same time a tract of land in Washington county was purchased of John B. Hamilton for $6,500. Of the purchase money received from the sale of the Tazewell land, $3,000 was paid to Hamilton. A title bond was executed by him to Lucinda Ratliff and John R. Ratliff, a son, who gave their joint bond for the unpaid purchase money. On the 11th of February, 1887, this title bond was surrendered to Hamilton, an additional $1,000 was paid on the purchase, and a new title bond was executed to Lucinda Ratliff and F. A. Ratliff, another son; and Lucinda Ratliff and F. A. Ratliff gave their bond for the balance of the purchase money.

M. S. Ratliff, the husband, claimed that he bought the Hamilton land and paid every dollar of the purchase money, and that he had the title bond executed to his wife and son for the purpose, as in the case of the Tazewell land, of avoiding the payment of the Ratliff & Rife debts.

Lucinda Ratliff died in the fall of 1887.

On the 9th day of February, 1891, F. A. Ratliff assigned to his father, M. S. Ratliff, his interest, as purchaser, under the title bond of February 11, 1887. The consideration for this assignment, as stated therein, was the agreement of M. S. Ratliff to pay the balance of the purchase money to Hamilton. This balance, at the date of assignment, was $1,816.

On September the 4th, 1896, Hamilton, without authority from the heirs of Lucinda Ratliff, conveyed the entire tract of land to M. S. Ratliff. The heirs threatened him with a suit, whereupon he filed a bill, asking that all the parties in interest be convened and their rights adjudicated.

The Circuit Court held that M. S. Ratliff's conduct was fraudulent as respects both the Tazewell and Hamilton lands, but allowed him an interest in the Hamilton land in the proportion that $1,816, the balance of

the purchase money which he then agreed to pay, bore to $6,500, the whole purchase money agreed to be paid for the land.

Upon appeal, the Supreme Court held this to be erroneous, in so far as it limited his interest in the proportion stated, saying: "Under the assignment by F. A. Ratliff of February, 1891, the appellant took his assignor's shoes, and became a tenant in common with the heirs of Lucinda Ratliff, and *is entitled to an interest in the land to the extent that he* [M. S. Ratliff] *has paid the purchase money. Grove* v. *Grove*, 100 Va. 556, 42 S. E. 312. It was, therefore, error in the court to limit the interest of the appellant to the extent of the unpaid purchase money due at the date of the assignment."

We can see how the court reached the conclusion that it was error in the Circuit Court to limit the interest of the appellant, M. S. Ratliff, "to the extent of the unpaid purchase money due at the date of the assignment." But, we are unable to see how the court reached the further conclusion that M. S. Ratliff "is entitled to an interest in the land to the extent that he has paid the purchase money."

The court decides that the title bond from John B. Hamilton to Lucinda Ratliff and F. A. Ratliff was valid between the parties, though executed at the instance of M. S. Ratliff for the purpose of committing a fraud upon his creditors; and that, under this title bond, Lucinda Ratliff and F. A. Ratliff held as co-tenants—each being entitled to an interest in the land to the extent that she or he had paid the purchase money. From this and the fact that F. A. Ratliff assigned his interest in the title bond to M. S. Ratliff, can it follow that M. S. Ratliff is entitled to "an interest in the land to the extent that he has paid the purchase money?" We think not. The purchase money paid by M. S. Ratliff gave him no interest in the land, because of his fraudulent purpose in procuring the execution of the title bond to Lucinda Ratliff and F. A. Ratliff, but inured to the benefit of Lucinda Ratliff and F. A. Ratliff, as co-tenants. The greater part of the purchase money was paid by Lucinda Ratliff. The rest was paid by M. S. Ratliff. And no part was paid by F. A. Ratliff. So the only interest F. A. Ratliff could have had in the land was the interest as co-tenant, derived through the payments made by M. S. Ratliff. This interest—namely, one-half of the amount paid by M. S. Ratliff—was all that F. A. Ratliff had to convey, and, therefore, all that could have passed under the assignment to M. S. Ratliff. We submit, therefore, that M. S. Ratliff is not entitled to an interest in the land *to the extent that he has paid the purchase price;* but only to the extent of *one-half* of the purchase money paid by him before the assignment, together with the unpaid purchase money due at the date of the assignment.

The view taken by us here is at variance with that expressed by Judge Cardwell in his dissenting opinion, in which President Keith concurs. According to our view, the maxim "*nemo allegans suam turpitudinem est audiendus*" applies to this case more properly than that of "*in pari delicto potior est conditio defendentis.*" Judge Christian, in *Harris* v. *Harris*, 23 Gratt. 757, quotes from Judge Green, in *Starke* v. *Littlepage*, 4 Rand. 368, as follows:

"It is a general rule that, '*in pari delicto potior est conditio defendentis*,' and this was the principle at the civil law. But this rule operates only in cases where the refusal of the courts to aid either party, frustrates the object of the transaction and takes away the temptation to engage in contracts *contra bonos mores*, or violating the policy of the law. If it be necessary in order to discountenance such transactions, to enforce such a contract at law, or to relieve against it in equity, it will be done, though both the parties are *in pari delicto*. The party is not allowed to allege his own turpitude in such cases, when defendant at law, or prevented from alleging it when plaintiff in equity, whenever the refusal to execute the contract at law, or the refusal to relieve against it in equity, would give effect to the original purpose, and encourage the parties engaged in such transactions. . . . To allow a fraudulent debtor conveying his property to another with intent to defraud his creditors to allege that fraud, for the purpose of avoiding the transfer, would be using the maxim of the law to frustrate the policy of that maxim by giving full effect to the fraudulent contrivance of the parties according to their intent; and, indeed, rather to enforce than to frustrate the fraudulent contract, and debtors might with perfect impunity practice frauds upon their creditors."

See also *James* v. *Bird*, 8 Leigh 510; *Terrell* v. *Imboden*, 10 Leigh 321; and *Sharp* v. *Owen*, 12 Leigh 429. G. C. G.